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§ 73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of § 26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records in paragraph (d)(2)(iii) of this section have not been retained and must be informed in writing that the temporary removal or suspension or other administrative action that was taken will not be disclosed, and need not be disclosed by the individual, in response to requests for information concerning removals, suspensions, administrative actions or history of substance abuse.

(e) The Medical Review Officer's review of the test results must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

(f) All testing of specimens for urine drug testing, except onsite testing under paragraph (d) above, must be performed in a laboratory certified by the U.S. Department of Health and Human Services for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (Section 2.7(d) of appendix A), all specimens sent to certified laboratories shall be subject to initial screening by the laboratory and all specimens screened as presumptively positive shall be subject to confirmation testing by the laboratory. Licensees shall submit blind performance test specimens to certified laboratories in accordance with the NRC Guidelines (appendix A).

(g) Tests for alcohol must be administered by breath analysis using breath alcohol analyses devices meeting evidential standards described in section 2.7(O)(3) of appendix A. A breath alcohol content indicating a blood alcohol concentration of 0.04 percent or greater must be a positive test result. The confirmatory test for alcohol shall be done with another breath measurement instrument. Should the person demand further confirmation, the test must be

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a gas chromatography analysis of blood.

[54 FR 24494, June 7, 1989, as amended at 56 FR 41926, Aug. 26, 1991; 58 FR 31469, June 3, 1993; 59 FR 507, Jan. 5, 1994]

## § 26.25 Employee assistance programs (EAP).

Each licensee subject to this part shall maintain an employee assistance program to strengthen fitness-for-duty programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the scope of this part. Employee assistance programs should be designed to achieve early intervention and provide for confidential assistance. The employee assistance program staff shall inform licensee management when a determination has been made that any individual's condition constitutes a hazard to himself or herself or others (including those who have self-referred).

## § 26.27 Management actions and sanctions to be imposed.

(a)(1) The licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual before the initial—

(i) Granting of unescorted access to a nuclear power plant protected area;

(ii) Granting of unescorted access by a formula quantity SSNM licensee to Category IA Material;

(iii) Assignment to create or the initial granting of access to safeguards of procedures for SSNM;

(iv) Assignment to measure Category IA Material;

(v) Assignment to transport or escort Category IA Material;

(vi) Assignment to guard Category IA Material; or

(vii) Assignment to activities within the scope of this part to any person.

(2) The licensee, as applicable, shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past—

(i) Tested positive for drugs or use of alcohol that resulted in on-duty impairment;

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(ii) Subject to a plan for treating substance abuse (except for self-referral for treatment);

(iii) Removed from activities within the scope of this part;

(iv) Denied unescorted access at any other nuclear power plant;

(v) Denied unescorted access to SSNM;

(vi) Removed from responsibilities to create or have access to safeguards records or procedures for SSNM;

(vii) Removed from responsibilities to measure SSNM;

(viii) Removed from the responsibilities of transporting or escorting SSNM; or

(ix) Removed from the responsibilities of guarding SSNM at any other facility in accordance with a fitness-for-duty policy.

(3) If a record of the type described in paragraph (a)(2) of this section is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's inquiry supported by a signed release from the individual.

(4) Failure to list reasons for removal or revocation of unescorted access is sufficient cause for denial of unescorted access. Temporary access provisions are not affected by this part if the prospective worker passes a chemical test conducted according to the requirements of § 26.24(a)(1).

(b) Each licensee subject to this part shall, as a minimum, take the following actions. Nothing herein shall prohibit the licensee from taking more stringent action.

(1) Impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this part, and may be returned only after determined to be fit to safe-

ly and competently perform activities within the scope of this part.

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in, as applicable—

(i) Removal from unescorted access to nuclear power plant protected areas;

(ii) Removal from unescorted access to Category IA Material;

(iii) Removal from responsibilities to create or have access to records or procedures for safeguarding SSNM;

(iv) Removal from responsibilities to measure Category IA Material;

(v) Removal from the responsibilities of transporting or escorting Category IA Material;

(vi) Removal from the responsibilities of guarding Category IA Material at any other licensee facility; and

(vii) Removal from activities within the scope of this part for a minimum of 3 years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must be removed from activities within the scope of this part. The individual may not—

(i) Be granted unescorted access to nuclear power plant protected areas;

(ii) Be granted unescorted access to Category IA Material;

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(iii) Be given responsibilities to create or have access to safeguards records or procedures for SSNM;

(iv) Be given responsibilities to measure Category IA Material;

(v) Be given responsibilities to transport or escort Category IA Material;

(vi) Be given responsibilities to guard Category IA Material; or

(vii) Be assigned to activities within the scope of this part for a minimum of 5 years from the date of removal.

(4) Persons removed for periods of three years or more under the provisions of paragraphs (b) (2) and (3) of this section for the illegal sale, use or possession of drugs and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this part by a licensee subject to this part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from drugs for at least three years. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to perform activities within the scope of this part. Any person granted unescorted access or whose access is reinstated under these provisions must be given unannounced follow-up tests at least once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated to verify continued abstinence from proscribed substances. Any confirmed use of drugs through this process or any other determination of subsequent involvement in the sale, use or possession of illegal substances must result in permanent denial of unescorted access.

(5) Paragraphs (b) (2), (3), and (4) of this section do not apply to alcohol, valid prescriptions, or over-the-counter drugs. Licensee sanctions for confirmed misuse of alcohol, valid prescription, and over-the-counter drugs shall be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs.

(c) Refusal to provide a specimen for testing and resignation prior to removal for violation of company fitness-

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for-duty policy concerning drugs must be recorded as removals for cause. These records must be retained for the purpose of meeting the requirements of § 26.27(a).

(d) If a licensee has a reasonable belief that an NRC employee may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but shall escort the individual. In any instance of this occurrence, the appropriate Regional Administrator must be notified immediately by telephone. During other than normal working hours, the NRC Operations Center must be notified.

[54 FR 24494, June 7, 1989, as amended at 58 FR 31470, June 3, 1993]

### § 26.28 Appeals.

Each licensee subject to this part, and each contractor or vendor implementing a fitness-for-duty program under the provisions of § 26.23, shall establish a procedure for licensee and contractor or vendor employees to appeal a positive alcohol or drug determination. The procedure must provide notice and an opportunity to respond and may be an impartial internal management review. A licensee review procedure need not be provided to employees of contractors or vendors when the contractor or vendor is administering his own alcohol and drug testing.

### § 26.29 Protection of information.

(a) Each licensee subject to this part, who collects personal information on an individual for the purpose of complying with this part, shall establish and maintain a system of files and procedures for the protection of the personal information. This system must be maintained until the Commission terminates each license for which the system was developed.

(b) Licensees, contractors, and vendors shall not disclose the personal information collected and maintained to persons other than assigned Medical Review Officers, other licensees or their authorized representatives legitimately seeking the information as required by this part for unescorted access decisions and who have obtained a release from current or prospective employees or contractor personnel, NRC